

Ser. No. 10/069,262

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Response to Restriction Requirement of 27 June 2003

Atty Docket 117040-53

**REMARKS**

Before addressing the restriction requirement, the applicant respectfully objects to this entire Office Action. Simply put, it should not have occurred. This case was filed on 22 February 2002 as a national stage entry under 35 USC §371. The application was accepted under §371 on Form PCT/DO/EO/903, mailed by the USPTO on 1 July 2002. If the Examiner had noted that the application was a §371 national stage entry, then the Examiner should not have made a restriction requirement. This requirement appears to be a transparent effort to take a first Office Action within prescribed time frames, without regard to the quality of the action.

In the restriction requirement, the Examiner has stated that the application contains two inventions, as follows:

Invention I     Claims 1-4, drawn to a device

Invention II    Claims 5-32, drawn to a process for manufacturing the device.

The Examiner has stated that the inventions are distinct as process of making and the product made. Applicant traverses this holding. The Examiner has not made any realistic attempt to show that the particular device disclosed can be manufactured by any method other than the disclosed method, in spite of the Examiner's unsupported allegation that "selective deposition" could be used for forming the emitter layer.

More importantly, the Examiner has not recognized the fact that these claims qualify for concurrent examination under the PCT "unity of invention" standard which must be applied. The Examiner has improperly applied MPEP Section 806.05(f) to this PCT national stage entry case.

Applicant respectfully notes that the Examiner returned a phone call from the undersigned regarding the propriety of the restriction requirement, with a request that the Examiner withdraw the requirement, but that the Examiner has indicated that the requirement could not be withdrawn without a traversal being filed.

**Election of Invention**

In spite of the applicant's objection to the restriction requirement, applicant elects to prosecute **INVENTION II**, as required by rule. Because the applicant believes that the

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restriction requirement should be withdrawn, applicant does not cancel any claims to the non-elected invention.

Respectfully submitted,



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